IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7651 OF 2006

Chandrakant Poonamchand Doshi ..Petitioner (Org. Plaintiff)

Vs.

Gopladas Gokaldas Parikh ..Respondent

Mr. P.N. Karlekar for petitioner.
Mr. B.H. Shah for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : March 16, 2007.

P.C.:

1. Heard Mr. Karlekar the learned counsel for the petitioner and Mr. Shah the learned counsel for the respondent. Rule. Respondent waives service. Rule is made returnable forthwith.

2. It appears that the petitioner had made an application for examining an additional witness by name Shri Arun Narayan Khandhare (PW 2) in support of his case and this application came to be rejected by the Small Causes Court at Mumbai on 20/9/2006. Hence

this petition.

3. The trial court noted that the suit was pending from the year 1981 and the first witness of the plaintiff was examined on 14/6/2006. On the request made by the learned Advocate for the plaintiff, the suit was adjourned for the evidence of PW 2 on 30/6/2006 but on that day an adjournment application was filed stating that PW 2 was not able to attend the court. Again the suit was adjourned to 19/7/2006 on which date another application was filed for adjournment stating that the original witness cited as PW 2 and by name Shri Narayan Murari Khandhare had, in the meanwhile, expired. This adjournment application was rejected and, therefore, supported by the affidavit of Arun son of Narayan Khandhare a fresh application was presented.

4. While issuing notice before admission, this court had directed the petitioner to deposit an amount of Rs.5000/- which he has done as per the receipt dated 28/11/2006. The learned counsel for the petitioner, on instructions, states that Arun son of

Narayan Khandhare sought to be examined as PW 2 by the plaintiff will be, if allowed, examined on 23/3/2007 and no further adjournment will be asked for. The said witness is sought to be examined to prove signatures of his father Narayan. No prejudice will be caused to the defendant if a last opportunity is given to the plaintiff to examine Arun Narayan Khandhare and thereafter the defendant would be cross examined on affidavit in evidence he has placed on record. In addition, the trial court could be directed to decide the suit finally within a fixed period. In this manner the interest of justice would be better served.

5. Hence the petition is disposed off by directing the Small Causes Court to examine Shri Arun Narayan Khandhare as second witness of the plaintiff in R.A.D. Suit No.542 of 1981, if he remains present before the said court on 23/3/2007 at 11 a.m. onwards and is available for the full day as per the convenience of the court for being examined. His depositions i.e. examination-in-chief as well as cross examination shall be completed on that day, if

he remains present. The amount deposited with this court shall be allowed to be withdrawn by the defendant. The trial of the suit will be completed as expeditiously as possible and preferably by 31st May, 2007. Consequently the impugned order stands set aside and Int. Notice No.839 of 2006 is allowed in the above terms.

6. Writ to go to the court below forthwith and in addition, an authenticated copy of this order be made available to the parties.

(B.H. Marlapalle,J.)